

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

**WILLARD BAYS, individually and
on behalf of all others similarly situated,**

Plaintiff,

v.

**CIVIL ACTION NO. 3:21-CV-00460
Judge Robert C. Chambers**

**WALMART INC., a Delaware
corporation, WAL-MART STORES
EAST, LP, a Delaware corporation,**

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF SETTLEMENT

Comes Plaintiff, Willard Bays, by counsel, and responds to Defendants' Notice of Settlement to advise this Court that Plaintiff timely and effectively submitted his Request for Exclusion in compliance with the provisions of the Order entered as part of *In Re: CaptureRX Data Breach Litigation*, 5:21-CV-00523-OLG, Doc.#45-1 attached to Defendants' Notice of Settlement as Exhibit A. In opposition to Defendants' Notice of Settlement, Plaintiff asserts as follows:

The Order entered within *In Re: CaptureRX Data Breach Litigation*, Doc.#45-1 provides in pertinent part:

IV. REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS

13. Each person wishing to opt out of the Settlement Class must sign and timely mail written notice of such intent to the designated address established by the Settlement Administrator. The written notice must clearly manifest an intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than 75 days after the date of entry of this Order.

14. Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall neither received any benefits of nor be bound by the terms of the Settlement.

The date of entry of the Order was March 3, 2022, See Doc.# 45-1. The form supplied to claimants states to communicate exclusion from the class action settlement the form must be postmarked “NO LATER THAN May 17, 2022”. On May 13, 2022, Willard E. Bays executed the Request for Exclusion provided to him as part of the notice he received from the claims administrator within *In Re: CaptureRX Data Breach Litigation*. See “Request for Exclusion” attached as Exhibit 1. The Request for Exclusion was tendered to the United States Post Office, addressed to CaptureRX Consumer Data Breach Litigation c/o Kroll Settlement Administration PO Box 225391, New York, NY 10150-5391 and the post mark stamping process was witnessed by Greta McHugh. See Affidavit, attached as Exhibit 2. The postmark stamp was placed on May 17, 2022. See Affidavit, attached as Exhibit 2.

Defendant has offered no evidence, affidavit from CaptureRX counsel, statement from Kroll Settlement Administration, or Court Order rejecting Plaintiff Willard E. Bays’ valid and timely Request for Exclusion. Accordingly, Willard E. Bays is not bound by the terms of the CaptureRX settlement and the CaptureRX settlement does not resolve, settle or release Willard E. Bays’ claims asserted within this lawsuit.

WHEREFORE, for the above reasons, Plaintiff respectfully requests this Court disregard Defendants’ Notice of Settlement. Plaintiff seeks such further relief as the Court deems appropriate.

Willard Bays,

By Counsel

/s/ William M. Tiano

William M. Tiano (WVSB # 4308)

Tony L. O'Dell (#5770)

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Defendants.

CERTIFICATE OF SERVICE

I, William Tiano, counsel for Plaintiff, do hereby certify that I have this 2nd day of June, 2022, served the foregoing PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF SETTLEMENT upon counsel of record by CM/ECF which will automatically cause an electronic copy to be delivered to the following counsel:

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